

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 04/05/2010 has been entered.

Claims 1-4 and 6-14 are pending.

Claim 5 has been canceled previously.

2. The text of those sections of Title 35 USC not included in this Action can be found in a prior Office Action.

This Action will be in response to applicant's remarks, filed 04/05/2010.

The rejections of record can be found in the previous Office Actions.

3. As indicated in the Advisory Action, mailed 08/24/2009; the previous rejections under 35 U.S.C. § 112, first paragraph, written description and enablement have been withdrawn in view of applicant's amendment, filed 08/04/2009.

4. As indicated in the Advisory Action, mailed 08/24/2009; the previous rejection under obviousness type double patenting over U.S. Patent No. 6,723,705 has been withdrawn in view of the terminal disclaimer filed 08/04/2009.

The terminal disclaimer filed on 08/04/2009 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,273,705 has been reviewed and has been accepted. The terminal disclaimer has been recorded.

5. Claims 1-4 and 6-14 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable claims 1-12 of U.S. Patent No. 6,451,305 (Boussiotis et al.) for the reasons of record.

Although the claims are not exactly the same, the patented claims anticipate or render obvious the instant claims. The prior art modification of tumor cells with B7-2 anticipates the instant B7-2 molecules. The instant tumors encompassing carcinoma, sarcoma, melanoma and neuroblastoma would be obvious targeted tumors, given the claims of Boussiotis et al. to stimulate T cells via modifying tumors with costimulatory molecules such as B7-2 at the time the invention was made by the ordinary artisan.

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Claims 1-4 and 6-14 are directed to an invention not patentably distinct from claims 1-12 of commonly assigned U.S. Patent No. 6,451,305 (Boussiotis et al.) for the reasons of record and reiterated herein above.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). Commonly assigned U.S. Patent No., discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

Applicant's amendment, filed 04/05/2010, indicated that applicant is in the process of reviewing documents to be filed that are consistent with the rules for joint research agreement is acknowledged.

6. No claim is allowed.

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, THIS ACTION IS MADE FINAL even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gambel whose telephone number is (571) 272-0844. The examiner can normally be reached Monday through Thursday from 7:30 am to 6:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735.

The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Phillip Gambel/

Primary Examiner
Technology Center 1600
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May 23, 2010